Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

ADRIAN BONILLA MONTALVO

Petitioner,

V.

BANCO BILBAO VIZCAYA, FORMER BANCO COMERICAL MAYAGUEZ; NEFTALI ROSAS; EUGENIO RIVERA; DAGOBERTO MONTALVO IGNACIO; NECA MORTGAGE CORP.; EDDIE ACARON & FRANK RAMIREZ RAMIREZ

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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78 pp

QUESTIONS PRESENTED

Does the bank businesses constitute a question that involves reasons of public policy of the State, and of a great public interest which bars the application of the doctrine and defense of res judicata, when the legality of a judgment is questioned, in which the creditor bases his claim, which imposes the debtor the payment of interests in excess of the permitted by law, based upon a contract that contains interests which violate the Usury Act?

Does the laws of Puerto Rico and the United States that regulate the bank businesses lose effectiveness, when there exists a judgment dictated in violation to those laws which permit a creditor to collect interests in excess of the permitted by law under the foundation that the resolved in the judgment in which he bases his claim is res judicata?

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PETITION FOR WRIT OF CERTIORARI

The petitioner, Adrian Bonilla Montalvo, requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit that was entered in this case on March 26, 1997.

———— * ————

OPINIONS BELOW

The judgment of the Court of Appeals for the First Circuit in case no. 96-2253 is not for publication. The First Circuit affirmed the Opinion and Order of the District Court for the District of Puerto Rico entered on August 20, 1996 in case no. 95-1029 (SEC), not published, that dismissed appeal from Opinion and Order entered on December 2, 1994 by the Bankruptcy Court for the District of Puerto Rico in case no. 87-00304 (GAC), Adversary 89-0029 (Docket #2), also not published.

The opinions are reprinted in the appendix.

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JURISDICTION

This lawsuit was filed in the United States Bankruptcy Court for the District of Puerto Rico, case no. 87-00304 (SEK), Adversary 89-0029 (Docket #2).

On December 2, 1994 the Bankruptcy Court for the District of Puerto Rico entered judgment granting full faith and credit to a judgment in which the respondent Banco Bilbao Vizcaya, former Banco Comercial Mayaguez, from here on "the bank" based it claim to collect interest for the amount of $24,996.91 at a 17% annual interest rate, according to judgment in case no. CS 81-1138 of state court of Puerto Rico, and denied fraud claim for collection of usurious interest presented by the petitioner in this case.

On August 20, 1996 the District Court for the District of Puerto Rico entered Opinion and Order dismissing an appeal of this petitioner in case no. 95-1029 (SEC).

On March 26, 1997 the Court of

Appeals for the First Circuit entered judgment that affirmed the opinion and order of the District Court for the District of Puerto Rico in case no. 96-2253.

Petitioner submitted a timely application to extend the time for filing this petition for writ of certiorari, and the application was granted by order of Justice Souter on June 11, 1997.

That action extended the deadline for filing petition to and including August 23, 1997.

The jurisdiction of the Supreme Court to review the judgment of the First Circuit is invoked under 28 U.S.C. sec. 2101(c).

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STATUTES INVOLVED

The statutes principally involved in this case are Banking Law of the Commonwealth of Puerto Rico, 7 L.P.R.A sec. 151(a); Civil Code of Puerto Rico, 31 L.P.R.A. sec. 4594; Code of Commerce

of Puerto Rico, 10 L.P.R.A. sec. 998(h); Public Law 96-221 of March 31, 1980 codified 12 U.S.C. sec. 1735 f-7; 12 U.S.C. sec 86; 18 U.S.C sec. 1961 (6)(B); 31 L.P.R.A. sec. 3343.

The text of all seven statutes is set out in the appendix below.

*

STATEMENT OF THE CASE

This case is about banking businesses between this petitioner and the bank, where the bank in this case prepared a loan contract containing the payment of usurious interest. The contract was for the amount of $35,776.00, interest at a 14% annual rate. The contract dated June 2, 1980 was given to the petitioner by Eugenio Rivera, manager of the bank, and was signed on May 28, 1980 and taken back to the bank.

For the date of the contract the field in Puerto Rico was preempted by Public Law 96-221, approved on March 31, 1980 and effective on April 1, 1980,

codified 12 U.S.C. sec. 1735 f-7.

Regulation Number 19-A of the Board of Regulation of Interest Rates and Financing Charges mentions the following:

> "While the Legislative Assembly of Puerto Rico does not dispose another thing, the annual maximum interest rate that can be collected will be the fixed in the regulation emitted for such purpose by the Federal Home Loan Bank Board in accordance with the dispositions of the Public Law Number 96-221 approved by the Congress and signed by the President of the United States of America on March 31, 1980."

According to that public law the maximum interest rate that could have been collected for June 2, 1980 in conventional mortgage loans, guaranteed by first mortgages was 12.85% per annum.

In 1981 the bank sued this petitioner in the state court of Puerto Rico, case no. CS 81-1138, claiming usurious interests at a 17% annual rate, and through fraud to the court obtained judgment to collect the principal of $35,776.00 and usurious interests for the amount of $24,996.91.

The judgment was affirmed by the Supreme Court of Puerto Rico, but in reconsideration about attorney fees said in a dictum that 17% was the interest that prevailed.

The bank presented a proof of claim, case 87-00304 (SEK), requesting the payment of the amount of $24,996.91 based on the judgment obtained in case no. CS 81-1138. This debtor-plaintiff in that case objected that judgment based on the grounds that the same was obtained through fraud to the state court to collect interest in excess of the allowed by law, and presented a fraud claim for the collection of usurious interests against the bank, case no. 87-00304 (SEK), Adversary 89-0029. Finally the bank collected $24,996.91 of interest according to the judgment in case CS 81-1138, and the Bankruptcy Court denied the fraud claim of this petitioner, concluding that the same was litigated in the state court in case no. 84-552 and is res judicata.

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REASONS FOR GRANTING THE WRIT

I. THERE IS A CONFLICT IN THE APPLICATION OF THE DOCTRINE OF RES JUDICATA TO A MATTER OF BANKING BUSINESS THAT IS OF GREAT PUBLIC INTEREST AND PUBLIC POLICY OF THE COMMONWEALTH OF PUERTO RICO AND THE UNITED STATES

In case no. 87-00304 (SEK), Adversary 89-0029 this petitioner submitted, by order of the court, documents to prove that the bank committed fraud to the court to obtain judgment on its behalf in case no. CS 81-1138 and that it collected interest in excess of the allowed by Public Law 96-221.

The bank in a reply motion to the proof of fraud admitted the following:

> "The most that could be concluded from those documents, on their face, is that the bank obtained a judgment with usurious interest. But usury and fraud are two completely different things. No fraud is committed by filing a complaint claiming usurious interest. Fraud is committed only when factual evidence is mis-represented either by false documents or false testimony."

> "The note was issued by plaintiff debtor on June 2, 1980. At that time the prevailing regulation was 19-A issued on April 2, 1980, to apply to loans granted from April 6, 1980. See Certification by the Commissioner of Financial Institutions, annexed to the motion of plaintiff-debtor. That regulation provided that the maximum rate allowed on conventional loans would be the rate fixed by regulation of the Federal Home Loan Bank Board, according to Public Law 96-221 approved on March 31, 1980. This law appears codified at 12 U.S.C. sec. 1735 f-7."

The Supreme Court of Puerto Rico has established that when usurious interests have been paid the defense of usury does not prescribe. Velázquez v. C. Jiménez, Inc., 113 P.R.R. 866 (1982).

Until the moment of confronting the proof of fraud for the collection of usurious interests which the bank indicates, that party had made believe to all the courts, through fraud and deceit, that it had the right to collect interests at a 17% annual rate, according to regulation 21-A of the Board of Regulation of Interest Rates and

Financing Charges, that it was the maximum interest permitted by law.

The admission of the bank is the best evidence that it committed fraud to the court to collect usurious interest based on a contract that contains the payment of usurious interest.

The Supreme Court of Puerto Rico has resolved that the violation of the disposed in Art. 1652 of the Civil Code, 31 L.P.R.A., sec. 4594 provides the nullity of the usurious pact and may not be made effective in a court of Puerto Rico, J.E. Candal & Co. V. Canino, 86 P.R.R. 481 (1962); Giráu V. González, 73 P.R.R. 393 (1952); Caraballo V. Registrar, 48 P.R.R. 902 (1935); Rivera V. Brignoni, 17 P.R.R. 1157 (1911).

The defense of usury against the bank's claim and the allegation of fraud of this petitioner in case no. 87-00304 (SEK), Adversary 89-0029 (Docket #2) were formally admitted by the bank in the course of a judicial proceeding. They are hereby established against the bank who made the admission with

the same effect as if found by jury after a contest. Blair V. Barlett, 75 N.Y. 150 (1978); McClillan V. Lewis, 35 Cal. App. 64, 169 Pac. 436 (1917); Mosely V. Johnson, 144 N.C. 277, 56 S.E. 929 (1967).

After admitting that they collected usurious interests through the judgment of case CS 81-1138, the bank alleged that it was res judicata in the courts of Puerto Rico and that this petitioner was barred to attack that judgment by fraud to the court because that attack had already been made in case CS 84-552 of the local court in Puerto Rico and that there the fraud claim of this petitioner was judged.

In case CS 84-552 of the local court, the bank made the same fraudulent allegations that it had made in case CS 81-1138 to legalize the collection of usurious interests it had made extrajudicially in September 23, 1981. In the resolution dictated in reconsideration in the referred case, the court expressed that the fraud in the proceedings was not alleged.

In the present case the determination about the application of the doctrine of res judicata has to be made according to the law and the jurisprudence of the courts of Puerto Rico. Texaco Puerto Rico, Inc. V. Medina, 834 F. 2d 242 (1987); In re Centro de Transmisiones Automáticas, 73 B.R. 279 (1987).

It is obvious that the claim of fraud of the here petitioner for collecting interests in excess of the permitted by law never has been judged in the local court, because if the local court had known in that moment, what the bank admitted, it was mandatory to dictate judgment according to Art. 1652 of the Civil Code of Puerto Rico, 31 L.P.R.A. sec. 4594.

Under the line of thought of the doctrine of res judicata, in Puerto Rico it has its statuary basis on Art. 1204 of the Civil Code, 31 L.P.R.A. sec. 3343. In Pagán Hernández V. University of P.R., 107 P.R.R. 795 (1978) there appears a good jurisprudence analysis about the doctrine of res

judicata. Said case exposes, quoting Pérez V. Bauzá, 83 P.R.R. 213, 217-218 (1961), the grounds of said doctrine as follows: ". . . on the one hand, the interest of the State in terminating litigations in order that judicial issues may not be perpetuated . . . and, on the other hand, the desirability of not submitting a citizen twice to the inconveniences which the litigation of the same cause entails."

In other words, the fact of the doctrine of res judicata, when applicable is that the judgment entered in a previous action bars the subsequent litigation, between the same parties and on the same cause of action and thing, of a claim which was litigated or adjudicated in the former action. Mercado Riera v. Mercado Riera, 100 P.R.R. 939 (1972); Isaac Sánchez v. Universal C.I.T. Credit, 95 P.R.R. 361, 370 (1967), Capo Sánchez v. Sec. of Treasury, 92 P.R.R. 817 (1965); Sastre v. Cabrera, 75 P.R.R. 1, 3 (1953); Manrique v. Aguayo, et al, 37 P.R.R. 314, 319 (1927).

Thus establishes a salutary public policy towards the convenience that litigations have an end and that there overcome a stage in which peace between the litigants in civil actions prevail. Pagán Hernández V. University of P.R., supra.; In re de Manati, 357 F. Supp. 1253 (1972).

Therefore, the application of res judicata does not proceed if with it an injustice is produced, especially in questions of public policy. Casa Marie Inc. V. Superior Court, 752 F. Supp. 1152 (1990).

In Marrero V. Vázquez Egean, 135 P.R.R. 14 (1994) the Supreme Court of Puerto Rico repeated that "the presumption of res judicata does not apply rigidly if doing so would defeat a principle of public policy or the ends of justice. Piñero Crespo V. Gordillo Gil, 122 P.R.R. 246, 257 (1988).

II. BANKING BUSINESS IS OF GREAT PUBLIC INTEREST AND IS THE POLICY OF THE COMMONWEALTH OF PUERTO RICO TO PREVENT UNSOUND PRACTICES

As we have already mentioned, the

Supreme Court of Puerto Rico has acknowledged several exceptions to the application of the doctrine of res judicata. Among the exceptions are those cases which are permeated by considerations of public order, as are the bank businesses.

The two leading cases are Pérez V. Bauzá, 83 P.R.R. 213 (1961); and Millán v. Caribe Motors Corp., 83 P.R.R. 474 (1961).

In Pérez the Supreme Court of Puerto Rico expressed that:

> "In general terms, it may be affirmed that the rule of res judicata is based on considerations of public policy and necessity: on the one hand, the interest of the State in terminating litigations . . .and on the other hand, the desirability of not submitting a citizen twice to the inconveniences which the litigation of the same cause entails. . . However, the courts have refused to apply rigidly the defense of res judicata if in doing it defeats the ends of justice, especially if reasons of public policy are involved . . .As already stated, the

> doctrine rests upon the basic principle that there should be an end to litigation, but if the rigid application thereof would in practice defeat a right permeated in some way with public interest, the courts are inclined to a solution which would guarantee proper justice instead of rigidly applying a fiction of law which rests fundamentally upon a principle of convenience and procedural order. . .In other words, the rule is not absolute and should always be weighed with the equally salutary principle that justice should be done in every case."

Therefore, the courts in Puerto Rico do not favor that the efficiency and correction of judgments be questioned repeatedly, the general rule has so few exceptions for the application of res judicata, that it should be applied only in very limited circumstances. Marrero V. Vázquez Egean, 135 P.R.R. 14 (1994). Of course, despite this concern, the fact is that exceptional reasons sometimes persist which force courts to push aside the finality of a judgment. One of them takes place when the previous judgment, as it happens in the presented case, causes a serious and manifest injustice to the aggrieved

party. Law calls for a public interest behind the decision of relieving a party of a previous evidently unfair judgment that would usually operate as res judicata. Ramos González V. Felix Medina, 121 P.R.R. 312 (1988). See, to the same effects, Pérez V. Bauzá, supra, and Pagán Hernández V. University de P.R., 107 P.R.R. 795 (1978).

In the present case there exists no only one, but two reasons of public interest to relieve this petitioner from the judgment obtained by the bank in case CS 81-1138: one, the Law of Banks of Puerto Rico, 7 L.P.R.A. sec. 151(a) Declaration of policy and powers of Secretary of the Treasury of Puerto Rico.

> (a) It is hereby declared that is the policy of the Commonwealth of Puerto Rico, that the businesses of all the banking institutions organized under the law of Puerto Rico and of the foreign banks operating in this Island, shall be inspected and regulated by the Secretary so as to insure the sound and safe conduct of said businesses in order to prevent unsound practices and thus maintain the public trust in said

> businesses and protect the public interest and the interest of the depositors, creditors and stockholders. As amended on July 23, 1974, No. 165 Part I, p. 767, sec. 8, eff. July, 1994.

As it can be seen, the bank businesses are a question of public policy in Puerto Rico and of great public interest.

It is a matter which transcends the interest of the parties. For that reason in this case the purity of the judicial process and its institutions is the thing at stake.

The other public interest which is present in this case is the honorability of the courts, that by applying inflexibly and rigidly the doctrine of res judicata have permitted the bank to collect usurious interests in a federal court, based on a contract of an illegal loan, and at the same time has unjustified and unjustly obligated this petitioner to pay illegal interests, when by law the bank does not have the right to collect interests in this case, Art. 1652 of the Civil

Code of Puerto Rico, 31 L.P.R.A. sec. 4594.

The loan contract prepared by the bank on June 2, 1980, is null ab initio, because it contains a pact of interest payments in excess of the permitted by Public Law 96-221, that by order of the Congress of the United States, regulated the maximum interests which was permitted by law to collect in loans, as the one which is object of litigation in this case.

The bank's behavior is one of the unsound practices which the laws pretend avoiding to maintain the public confidence in that so important business.

For being the bank businesses a question of such public interest and public policy of the government of Puerto Rico, the doctrine of res judicata, whose application could defeat a right permeated with reasons of public interest, does not apply in this case.

III. THE LOAN CONTRACT PREPARED BY THE BANK, DATED JUNE 2, 1980 IS COMPLETELY NULL AND VIOLATED BANKING LAWS

The loan contract prepared by the bank, dated June 2, 1980 is a new loan contract which includes a loan of January 18, 1977 for the amount of $25,000.00, reduced to $21,055.00 for the date of the new contract, and another loan of March, 1979 for the amount of $10,000.00. For the loan of 1977 interests at a 9 ½% annual rate were paid, when the maximum allowed by law was 9 ¼%. For the loan of 1979 interests at a 10 ½% annual rate were paid. The information the bank gave this petitioner when it handed over the loan contract of June 2, 1980, was "that the supervisors had criticized those loan because the interests were low compared with the interests of 1980."

The Code of Commerce of Puerto Rico, 10 L.P.R.A. sec. 998(h) disposes that every contract shall be governed by the provisions of the regulation in effect on the date the contract is completed, even if said regulation is subsequently amended or repealed.

The bank violated that disposition of law the moment in which it changed the interest rates of the loans of 1977 and 1979, that were the dates in which this petitioner received money loaned by the bank. In addition to this, the bank with its contract that violated public law 96-221 of March 31, 1980, because the 14% fixed in the same was an interest higher than the 12.85% which permitted the federal law that preempted the field for June 2, 1980, violated again the dispositions contained in 10 L.P.R.A. sec. 998(h) in September, 1981, when it extrajudicially collected from this petitioner interests at a 17% annual rate, and violated Art. 1652 of the Civil Code of Puerto Rico, 31 L.P.R.A. sec. 4594 by filing a complaint claiming usurious interest.

In the present case the bank incurred in unsound practices with the only purpose of economically lucrating itself and has obtained through judgment of the local court authorization to collect interests in excess of the permitted by the law in the courts of justice, whose honorability has been

put in danger, because this wrong precedent could be imitated by others that could also support themselves in that fiction of law which obeys fundamentally to a principle of convenience and procedural order, as it is the doctrine of res judicata.

The laws of public policy of bank transactions can not lose efficiency before the defense of res judicata because the public interest and the public confidence suffer with it, when the transgressor of the law is permitted to be successful, that in spite of recognizing to have violated the law, alleges that its violation was already judged and that it can not be judged again.

IV. THERE IS A CONFLICT BETWEEN THE JUDGMENT OF THE COURT OF APPEALS FOR THE FIRST CIRCUIT AND ANOTHER JUDGMENT OF THAT COURT AND JUDGMENTS OF THE SUPREME COURT OF PUERTO RICO

In the case of Medina V. Chase Manhattan Bank, N.A. 737 F. 2d 140, 144 (1984) that is a case in which Medina sued his employer Chase Manhattan Bank, and afterwards requested he be permitted

to waive without prejudice. The court in that occasion granted the desistment with prejudice. Afterwards, Medina presented another case in Florida and there the doctrine of res judicata was applied. The case went in appeal to the First Circuit, where applying the jurisprudence of the local court in Puerto Rico, that Court of Appeals indicated that the doctrine of res judicata, according to the cases of Pérez V. Bauzá, supra. and Millán V. Caribe Motors Corp., supra., does not apply, as an exception, when there are reasons of public order involved. In that case the First Circuit found that the case of Medina did not have any of the elements that were important in Pérez and Millán and therefore affirmed the District Court of the District of Puerto Rico. The present case is different, its about bank businesses and collection of interests higher then the permitted by public law 96-221, 12 U.S.C. sec. 1735 f-7 in violation to the Usury Act of Puerto Rico. That constitutes a bar to the application of the doctrine of res judicata in this case.

The Supreme Court of Puerto Rico has recognized that the doctrine of res judicata has various exceptions; one of the most important exceptions that has been recognized is the presence of fraud when obtaining the first judgment. Figueroa v. Municipality of San Juan, 98 P.R.R. 523 (1970); Bolker v. Superior Court, 82 P.R.R. 785 (1961); Suárez Fuentes v. Superior Court, 88 P.R.R. 133 (1962); Beoan v. Felsen, 442 U.S. 127 (1979).

In the case of proceedings the bank committed fraud to obtain its first judgment in case CS 81-1138 of the local court, so that it could collect the same interests as those it had already collected extrajudicially on September 23, 1981 when it required by letter the payment of 17% annual interests.

If the doctrine of res judicata is finally applied in the present case by this Honorable Supreme Court the ends of justice in a question where there are involved many reasons of public order would be defeated. In re Spinosa's Estate, 225 B. 2d 843 (Cal. 1953);

Universal Court Co. v. City of Fort Lauderdale, 86 So. 2d 366 (Fla. 1953); Commissioner of State Insurance Fund v. Law, 148 N.E. 2d 136 (N.Y. 1958).

In this case there exists an interesting situation that is the following:

In the mortgage promissory note to the bearer for the value of $25,000.00, interests at 9 ½% annual rate, signed by the petitioner on January 18, 1977, before Notary Public Frank Ramirez Ramirez, the bank charged and collected interest in excess of the allowed by law, because Regulation Number 11 of the Board of Regulation of Interest Rates and Financing Charges in its Art. 2(1a) fixed the maximum interest in 9 ¼% per annum in loans as ours.

In the appeal that was presented against the decision of the United States Bankruptcy Court for the District of Puerto Rico in case 87-00304 (GAC), Adversary 89-0029 (Docket #2), before the United States District Court for the District of Puerto Rico, case number

95-1029 (SEC), the Judge that dismissed the appeal, Hon. Salvador E. Casellas, for January 18, 1977 was President of the Board of Regulations of Interest Rates and Financing Charges, and he was the one who signed Regulation Number 11, approved by said board on November 26, 1976 and that entered in force on December 17, 1976. For such reason it was evident to the Honorable Judge due to his own and personal knowledge that the maximum interest which could be charged for January 18, 1977 was 9 $\frac{1}{4}$%, and because of his personal knowledge in bank matters, knew that the bank could not collect usurious interests under the bank laws of Puerto Rico, that as a public policy prohibits the collection of usurious interests in excess of the permitted by law. From the documental proof that was attached to said appeal, especially the complaint in case CS 81-1138, the collection of usurious interest appeared since January, 1977.

In the explanation of title 12, Bank and Banking, it points out, that "a secure banking system is essential

to the prosperity of this nation," an insecured banking system brings, like in this case, injustice, illegal interest, fraud and deceit on the real amount of loans and the real maximum interest allowed by law, and racketeering activity.

In federal jurisdiction, 12 U.S.C. sec. 86 was also intended to protect borrowers from paying excess interest. Landau V. Chase Manhattan Bank, N.A., D.C. N.Y. 1973, 367 F. Supp. 992.

V. THE BANK VIOLATED 18 U.S.C. 1961 (6)(B) BY fRAUDULENTLY INCREASING INTEREST VIOLATING BANKING LAWS

In the present case the bank raised the interests of the loans of 1977 from 9 ½% and 1979 from 10 ½% to 14%, violating the disposed in 10 L.P.R.A., sec. 998(h). Afterwards it extrajudicially collected interests at 17% in September 1981. Those increments were made with the economic profit in mind and with the only purpose of economically affecting this petitioner, so that due to the lack of payment of 17% annual interest foreclose his valuable property.

That action of the bank was considered in Federal courts "enterprise" for purposes of Chapter 96 - Racketeer Influenced and Corrupt Organizations, 18 U.S.C. sec. 1961 (6)(B). Fields V. National Republic Bank of Chicago, D.C. III. 1982, 546 F. Supp. 123.

Another of the bank's illegal action was to send letters by mail to collect interests in excess of the permitted by law to defraud this petitioner as it occurred during the year 1981.

The preparation of the loans illegal contract and the deed of mortgage constitution made by Frank Ramirez Ramirez, Esq., in which he assigned himself a twenty per cent (20%) of attorney fees for the case of judicial execution are part of the bank's enterprise.

In this case like in Velázquez v. C. Jiménez, Inc., 113 P.R.R. 866, 872, 873 (1982), the total amount of interest paid by this petitioner to the bank which total the sum of $14,685.98 should be deducted or reduced

from the total sums of money received in 1977 and 1979 from the bank, pursuant to the express provision of Art. 1652 of the Civil Code of Puerto Rico, 31 L.P.R.A. sec. 4594.

The judgment entered in case 87-00304 (GAC), Adv. 89-0029 (Docket #2) should be vacated and modified further in order to conform it to the provisions of Art. 1652 of the Civil Code of Puerto Rico.

This court should grant review to explain if the doctrine of res judicata is a good defense for the bank who violated banking laws and collected usurious interest, which is a question of great public interest in Puerto Rico and the United States, and summarily reverse the decision of the Court of Appeals for the First Circuit, and remand this case to the Bankruptcy Court for the District of Puerto Rico with orders to set aside the judgment obtained by the bank in case CS 81-1138 of the local court of Puerto Rico and dictate a new judgment under Art. 1652 of the Civil Code of Puerto Rico, 31 L.P.R.A. sec.

4594 for the principal due, once the interest paid are deducted, and ordering the devolution of twice the amount of the $24,996.91 of usurious interest collected in the Bankruptcy Court procedures in case 87-00304, according to 12 U.S.C. sec. 86, and the continuance of the tort fraud claim against the bank for collection of usurious interest, case no. Adv. 89-0029 (Docket #2), in the District Court of the United States for the District of Puerto Rico for trial by jury.

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CONCLUSION

In the alternative, this Petition for Certiorari should be granted or the First Circuit decision should be vacated with instructions to remand to District Court.

Respectfully submitted this 14th day of August, 1997 at San Juan, Puerto Rico.

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